



OFFICE OF THE INDEPENDENT POLICE AUDITOR

CITY OF SAN JOSÉ

APRIL 1996

VOLUME 1



FUNCTIONS OF THE OFFICE

The Office of the Independent Police Auditor (IPA) was established for the purpose of auditing the investigations of citizen complaints alleging misconduct by members of the San José Police Department (SJPd). This office opened its doors to the public on September 13, 1993. The IPA is independent from all other City entities and reports directly to the Mayor and to the City Council.

The IPA has three primary functions: (1) to provide an alternative forum where citizens may file complaints; (2) to review the investigations of citizen complaints conducted by the SJPd's Professional Standards and Conduct Unit (PSCU); and (3) to promote public awareness of a citizen's right to file a complaint. The Independent Police Auditor routinely meets with various groups and organizations to increase public awareness of a citizen's right to file a complaint.

1995 YEAR END REPORT

The IPA's 1995 Year End Report became public on March 29, 1996. Covering the period from January 1 to December 31, 1995, the report incorporates the statistics for the year 1995 and pending issues from the 1995 Midyear Report. In 1995, there was a total of 463 complaints, including In-Process complaints pending classification. The following information is included in this report:

- ☒ New issue: Off-Duty Employment Practices Should Be Reexamined
- ☒ Changes at the Professional Standards and Conduct Unit and the Office of the Independent Police Auditor
- ☒ Prior Issues: Updates and Recommendations
- ☒ Three one-year blocks of statistics comparatively analyzed from January through December for the years 1993, 1994, and 1995
- ☒ Statistical background of subject officers and complainants
- ☒ Complaints and allegations listed by City Council District

For a copy of the **1995 Year End Report**, please contact:

Office of the City Clerk
801 N. First St., Ste. 116
San Jose, CA 95110
(408) 277-4424

NEW ISSUE

OFF-DUTY EMPLOYMENT PRACTICES SHOULD BE REEXAMINED

The statistical and substantive information was compiled and analyzed from citizen complaints filed against officers working off-duty jobs. The Independent Police Auditor reviewed the existing process used to track and oversee off-duty employment. In addition, the Independent Police Auditor conducted interviews with police officers, members from the City Attorney's Office, and nightclub employers of off-duty officers.

Fifty percent (50%) of the Citizen-Initiated (CI) and Department-Initiated (DI) complaints filed against the San José police officers who worked off-duty involved Unnecessary Force (UF) allegations. The majority of the use of the force complaints originated at a bar or nightclub.

In 1995, there were 927 work permits issued to 596 officers with some officers having as many as three off-duty work permits on file. Approximately 50% of the entire San José Police Department (SJPd) has off-duty work permits issued.

The area that generated more calls and complaints to the IPA involved officers who were police uniforms while working off-duty. Of the 596 officers with work permits, 352 (59%) officers work off-duty in uniform. Officers are permitted to wear police uniforms and use police equipment for off-duty employment subject to approval by the Chief of Police.

There are three vulnerable areas in the process regulating off-duty employment:

accountability, public perception, and conflicts of interest. Accountability is lacking because there is no systematic oversight process to check the number of hours and the type of off-duty employment conducted. With as many as three off-duty jobs, an officer's ability to effectively conduct his or her primary job can be compromised. The inherent danger to the public from an officer who is fatigued or stressed is of great concern.

A frequent complaint expressed by the citizens is that officers' response to non-emergency calls is slow or not forthcoming. The officers working in uniform have high visibility unlike those working off-duty in civilian clothes. Citizens have complained that officers are seen standing idly outside bars instead of on patrol. The public exception and expectations are that officers in uniform should be willing and ready to serve the public.

Another area that is vulnerable to negative public perception is the cash payment to off-duty officers. Opportunities exist for speculation on the reasons for the exchange of cash between the officers and employers.

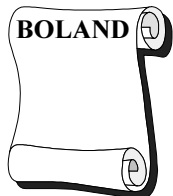
Conflicts of interest arise if an officer working outside the nightclub sees patrons that look to be under age being admitted or patrons entering or leaving the establishment appear to be drunk to the point that they are unable to care for themselves, or situations where the club is

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filled over capacity. Officers are placed in situations where job security with the clubs is in direct conflict with their duties as police officers.

This is a complex issue and the solution will require the expertise of the various internal police units and external City departments. Discussions are underway between the IPA and the Chief of Police to address this issue.

NEW LEGISLATION



A law, which became effective January 1, 1996, makes it is a misdemeanor to file an allegation of misconduct against any peace officer if one knows the complaint to be false. This law was authored by Paula Boland, Sate Assembly member from Granada Hills, and signed by Governor Pete Wilson. Any law enforcement agency accepting citizen complaints must have the complainant read and sign a specified information advisory. This legislation does not affect the IPA because it is not a law enforcement agency; the IPA is an alternative forum where a complaint may be initiated. Any complainant filing through the IPA will be informed and notified that he or she will be requested by the PSCU to sign the advisement in person or by mail or the complaint will not be investigated.

The IPA will explain to each complainant that the advisory is mandated by state law, but that complainants should not be dissuaded or be intimidated by the wording unless the complainant is being untruthful. A complaint with a "Not Sustained" finding does not infer that the complainant is untruthful. The truthfulness of the complainant is only one factor of a complaint not being sustained. Thus, a "Not Sustained" finding should not bring a criminal prosecution. The complainant is encouraged to sign and return the form to the PSCU.

The intent of the law is to discourage people from making complaints that they know are false. However, this threat of prosecution may have a chilling effect on some individuals filing complaints. From the

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CONSENT SEARCHES

A recurring theme found in citizen complaints involved situations where the allegation was an Unlawful Search by a San José police officer. Consent Forms are necessary for the protection of both the citizens and the officers. The San José Police Department's Duty Manual previously required officers to use a Consent to Search Form. This form was seldom used and has since been eliminated.

Without written policies to define proper procedure when conducting a consent search, findings of investigations of complaints cannot be sustained. The IPA made the following recommendations in the 1994 Year End Report:

1. Officer training or re-familiarization on the use of the Consent Form should be immediately implemented.
2. Supervisors should hold the officers accountable for the inclusion of these forms as part of the case investigation where consent was an issue, especially in searches of a home or dwelling. If the party refuses to sign, but gives verbal consent, the form should indicate this refusal.
3. The Consent Form should be revised to simplify wording to encourage its use. The present form contains too many legal terms, which may appear confusing to the officers and the public.
4. Officers who fail to use the Consent Form in the Duty Manual after training or re-familiarization should run the risk of a "Sustained" finding for an allegation of Improper Procedure in a citizen complaint.

The Police Department has just completed a revised policy addressing consent searches. This policy includes the use of a Consent Form at the discretion of the officer.

PROCEDURAL CHANGES FOR STRIP SEARCHES

A number of complaints revealed that persons arrested for suspicion of being under the influence of drugs were routinely strip searched because there was a presumption that they were in possession of drugs or contraband. Consequently, the San José Police Department revised a section in its Duty Manual in accordance with state law to address strip searches of all persons arrested and processed at the Pre-Processing Center.

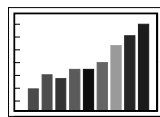
The new provisions specifically delineate under which circumstances a strip search will be conducted. Furthermore, a form will be completed and signed by the on-duty Pre-Processing supervisor in cases where an adult is arrested for a misdemeanor and a search is conducted. The form advises the officers of criminal repercussions for any person who conducts a search in violation of state law.

STATISTICS FROM FORMAL COMPLAINTS

UNNECESSARY FORCE COMPLAINTS

Eighty-one (81) Citizen-Initiated (CI) complaints and one Department-Initiated (DI) complaint alleged Unnecessary Force (UF) in 1995. From the CI complaints received between January and December 1995, the total number of UF allegations was 122. Compared to the previous two annual periods, UF allegations from CI complaints decreased by 38% over the period from January to December 1994 and decreased by 27% compared to the period from January to December 1993. Two UF allegations resulted from the DI complaint; when

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DISCIPLINE IMPOSED

From the Citizen-Initiated (CI) complaints closed in 1995, there were 20 disciplines imposed on subject officers. From the Department-Initiated (DI) complaints closed in 1995, there were 60 disciplines imposed on subject officers. The complaints closed in 1995 were filed in 1993, 1994, or 1995.

Documented Oral Counseling accounted for 55% of the disciplines in CI cases and for 32% of the disciplines in DI cases. A Letter of Reprimand was more frequent

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NEW LEGISLATION (from page 2)

IPA's perspective, this law is not necessary because there is an "Unfounded" finding that addresses cases with no merit. In addition, officers can file civil actions against complainants who file frivolous complaints. In the IPA's two and a half years of existence, only one complainant has been subjected to civil liability. The Chief of Police, City Manager, and the IPA oppose this law, however, the PSCU and the IPA will comply with the Boland Admonishment requirements. Those serious complaints, in which the complainant is not willing to sign the Admonishment, can still be investigated by the Chief of Police as a Department-Initiated complaint.

UNNECESSARY FORCE (from page 2)

compared to the previous two years, the number of UF allegations from DI complaints remained the same for 1995.

Another area of statistics the IPA is tracking is the type of force the subject officers may have used as alleged by the complainant. The following table lists the number of times the complainant complained about a type of force allegedly used by the subject officer(s).

TYPE OF ALLEGED UNNECESSARY FORCE January 1 - December 31, 1995			
Hands	49	Car (officer)	5
Baton	14	Object	4
Feet	13	Taser	2
Tight Handcuffs	13	Deadly Force	2
Chemical Agent	10	Canines	2
Gun (officer)	5	Car (complainant)	1

The type of force from the DI complaint filed in 1995 was the alleged use of officer's hands against the complainant.

DISCIPLINE IMPOSED (from page 2)

(32%) in the DI cases than in the CI cases (15%). Training and Counseling accounted for 12% of the DI disciplines and 10% of the CI disciplines imposed. The 10-Hour Suspension discipline made up 12% of the DI disciplines and 5% of the CI disciplines. The 80-Hour Suspension discipline accounted for 3% of the DI disciplines. The 160-Hour Suspension of the subject officer was imposed twice in DI cases and once in a CI case. The 120-Hour Suspension discipline was imposed once in a DI case.

COMPLAINTS BY CITY COUNCIL DISTRICT

The following table illustrates the total number of all complaints received by each City Council District; however, the complaints categorized as In-Process are not included because they are still awaiting classification.

Summary of Complaints Received

January 1 - December 31, 1995

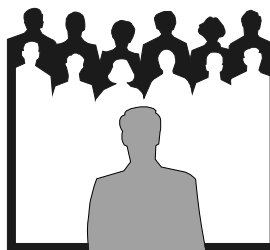
Council District	Type of Complaints					Total Cases	%
	CI	DI	IN	PO	PR		
1 JOHNSON	11	3	7	0	7	28	7%
2 POWERS	12	2	4	0	8	26	6%
3 PANDORI	39	37	24	0	30	130	31%
4 FERNANDES	8	0	7	2	5	22	5%
5 DIAZ	20	4	7	0	7	38	9%
6 FISCALINI	14	5	8	0	9	36	9%
7 SHIRAKAWA, JR.	17	5	6	0	8	36	9%
8 WOODY	17	1	10	1	9	38	9%
9 DIQUISTO	9	3	8	0	7	27	6%
10 DANDO	11	2	5	1	6	25	6%
Unknown/Outside City Limit	2	9	1	1	0	13	3%
TOTAL CASES	160	71	87	5	96	419	100%
%	38%	17%	21%	1%	23%	100%	

Legend: CI = Citizen-Initiated, DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural

COMMUNITY OUTREACH

THE INDEPENDENT POLICE AUDITOR REACHES OUT

In the past year, the IPA met with members of the City Council, ACLU, media, Rights Commission and others. community meetings where about the functions of the office the first edition of a semiannual increase public awareness of accomplishments of the IPA.



with members of the City NAACP, Lion's Club, Human The IPA attended numerous information and presentations were made. The creation of newsletter this year will the functions and The newsletters will contain a synopsis of the contents of the public reports. Dissemination of this information to a greater number of San José residents will help promote the IPA's mission and objectives, in addition to providing important statistics from the IPA reports.

GOALS FOR 1996

The goals for the 1996 calendar year will focus on existing issues and on ways to improve the process currently used to address these issues. The most important issue involves the investigation of Unnecessary Force cases. Several areas will be evaluated to prioritize Unnecessary Force cases so that the investigations are completed in a timely manner. In addition, better documentation to track complainants and civilian witnesses will be explored. Defining what is sufficient evidence for cases to be sustained as well as separating the serious verses the less serious use of force complaints will be addressed.

The second goal is to find ways to automate the transfer of information from the PSCU to

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OFFICERS SEPARATED FROM THE SJPD

In 1995, five subject officers were either terminated or resigned pending termination from the San José Police Department as a result of CI and DI complaints. Three subject officers from officers from complaints closed in 1995 were terminated; one officer was from a CI case and two officers were from DI cases. Two subject officers resigned pending termination from the San José Police Department; one officer was from a CI case and another officer from a DI case. The allegations in the complaints involved multiple allegations of Unofficerlike Conduct, Improper Procedure and Failure to Take Action. These allegations were all sustained.

TIPS ...

Helpful information to obtain before filing a complaint against a San Jose police officer.

- ☛ date, time and location of incident,
- ☛ name, badge number or description of involved police officers,
- ☛ name, phone number and/or address of any potential witnesses

■ **GOALS FOR 1996 (from page 3)**

the IPA. Automation is one way to keep personnel and supplies costs down and also makes the PSCU/IPA database more accessible. Automating the data from the 1995 case audits and thereafter keeping current with the 1996 cases audits will be realized in 1996.

Lastly, the IPA will identify and maintain distribution sources for this and upcoming IPA newsletters. The cost of printing the public reports for a wide distribution is prohibitive. Currently, the IPA prints approximately 200 copies of each report.

The past accomplishments, ongoing projects and future goals will all be conducted consistent with the mission of the IPA which is to provide an independent civilian oversight of the investigations of citizen complaints. After two years of reviewing the citizen complaint process, it is the opinion of the IPA that while police misconduct occurs in the San José Police Department it is nevertheless not institutionalized.



**We welcome your comments about
this newsletter!**

*To file a complaint against a
SJPD officer, contact:*

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OR

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